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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

December 14, 2017

Ernesto Alvarez, Plant Manager
Mike Brent, Plant Operator
Steve Azevedo, California Environmental
Manager
Dave Smith, Operations Manager
Dustin Hiehle, Safety and Env'tl Services
Concrete Inc. dba Knife River - Stockton
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David C. Barney, President and CEO
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David C. Barney, President and Chief
Executive Officer
Knife River Corporation – Northwest
c/o Knife River Corporation
1150 W Century Avenue
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VIA FIRST CLASS MAIL

CT Corporation System
Agent for Service of Process for
Knife River Corporation – Northwest
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Los Angeles, CA 90017

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Los Angeles, CA 90017

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Messrs Alvarez, Brent, Azevedo, Smith, Hiehle, and Barney:

I am writing on behalf of California Sportfishing Protection Alliance ("CSPA") in regard to violations of the Clean Water Act (the "Act") that CSPA believes are occurring at your industrial facility located at 400 S. Lincoln Street in Stockton, California ("Facility"). CSPA is a non-profit public benefit corporation dedicated to the preservation, protection, and defense of the environment, wildlife, and natural resources of Mormon Slough, the San Joaquin River, the

Notice of Violations and Intent to File Suit

Sacramento-San Joaquin Delta and other California waters. This letter is being sent to Concrete Inc. dba Knife River - Stockton, Concrete Inc. dba Knife River, Knife River Corporation, Knife River Corporation – Northwest, Ernesto Alvarez, Mike Brent, Steve Azevedo, Dave Smith, Dustin Hiehle, and David C. Barney as the responsible owners or operators of the Facility (all recipients are hereinafter collectively referred to as “Concrete Inc.”).

This letter addresses Concrete Inc.’s unlawful discharge of pollutants from the Facility to Mormon Slough, which flows to the San Joaquin River and then into the Sacramento-San Joaquin River Delta. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (“NPDES”) Permit No. CA S000001, State Water Resources Control Board (“State Board”) Order No. 97-03-DWQ (“1997 Permit”) as renewed by Order No. 2015-0057-DWQ (“2015 Permit”). The 1997 Permit was in effect between 1997 and June 30, 2015, and the 2015 Permit went into effect on July 1, 2015. As explained below, the 2015 Permit maintains or makes more stringent the same requirements as the 1997 Permit. As appropriate, CSPA refers to the 1997 and 2015 Permits in this letter collectively as the “General Permit.” The Waste Discharger identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Central Valley Region (“Regional Board”) and the State Board is 5S39I014964. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violations and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, CSPA hereby places Concrete Inc. on formal notice that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CSPA intends to file suit in federal court against Concrete Inc. under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

In its Notice of Intent to Comply with the Terms of the General Permit (“NOI”), Concrete Inc. certifies that the Facility is classified under SIC code 3273. The Facility collects and discharges storm water from its 4 acre industrial site through at least one storm drain and outfall. The outfall discharges to Mormon Slough, which flows into the San Joaquin River, and then into the Sacramento-San Joaquin Delta (“Delta”).

The Regional Board has identified beneficial uses of the Central Valley Region’s waters and established water quality standards for the San Joaquin River and its tributaries, and the Delta, in “The Water Quality Control Plan (Basin Plan) for the California Regional Water

Quality Control Board, Central Valley Region – The Sacramento River Basin and The San Joaquin River Basin,” generally referred to as the Basin Plan. *See* http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr.pdf. The beneficial uses of these waters include, among others, domestic and municipal supply, water contact recreation, non-contact water recreation, wildlife habitat, warm and cold freshwater habitat, and fish spawning. The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but where there is generally no body contact with water, nor any likelihood of ingestion of water. These uses include, but are not limited to, picnicking, sunbathing, hiking, camping, boating, . . . hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” Basin Plan at II-1.00 – II-2.00. Visible pollution, including cloudy or muddy water from industrial areas, impairs people’s use of the Sacramento River, and the Delta for contact and non-contact water recreation.

The Basin Plan establishes water quality standards for the San Joaquin River and its tributaries and the Sacramento-San Joaquin Delta. It includes a narrative toxicity standard which states that “[a]ll waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life.” *Id.* at III-8.01. It provides that “[w]ater shall not contain floating material in amounts that cause nuisance or adversely affect beneficial uses.” *Id.* at III-5.00. It provides that “[w]ater shall be free of discoloration that causes nuisance or adversely affects beneficial uses.” *Id.* It provides that “[w]aters shall not contain suspended materials in concentrations that cause nuisance or adversely affect beneficial uses.” *Id.* at III-7.00. The Basin Plan also prohibits the discharges of oil and grease, stating that “[w]aters shall not contain oils, greases, waxes, or other materials in concentrations that cause nuisance, result in a visible film or coating on the surface of the water or on objects in the water, or otherwise adversely affect beneficial uses.” *Id.* at III-6.00. The Basin Plan provides that the pH shall not be depressed below 6.5 nor raised above 8.5. *Id.* The Basin Plan requires that “[w]aters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses.” *Id.* at III-9.00.

Table III-1 of the Basin Plan provides a water quality objective (“WQO”) for iron of 0.3 mg/L.

The Basin Plan provides that “[a]t a minimum, water designated for use as domestic or municipal supply (MUN) shall not contain concentrations of chemical constituents in excess of the maximum contaminant levels (MCLs) specified in the following provisions of Title 22 of the California Code of Regulations, which are incorporated by reference into this plan: Tables 64431-A (Inorganic Chemicals) and 64431-B (Fluoride) of Section 64431, Table 64444-A (Organic Chemicals) of Section 64444, and Tables 64449-A (Secondary Maximum Contaminant Levels-Consumer Acceptance Limits) and 64449-B (Secondary Maximum Contaminant Levels-Ranges) of Section 64449.” *Id.* at III-3.00. Table 64449-A provides Secondary MCLs (“SMCL”) for iron of 0.3 mg/L.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology

economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).¹ The following benchmarks have been established for pollutants discharged by Concrete Inc.: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L; and iron – 1.0 mg/L.

These benchmarks are reflected in the 2015 Permit in the form of Numeric Action Levels (“NALs”). The 2015 Permit incorporates annual NALs, which reflect the 2008 EPA Multi-Sector General Permit benchmark values, and instantaneous maximum NALs, which are derived from a Water Board dataset. The following annual NALs have been established under the 2015 Permit: TSS – 100 mg/L and iron – 1.0 mg/L. The 2015 Permit also establishes the following instantaneous maximum NALs: pH – 6.0-9.0 s.u.; TSS – 400 mg/L; and oil & grease (“O&G”) – 25 mg/L.

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit.

Concrete Inc. has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the 1997 Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. The 2015 Permit includes the same effluent limitation. *See* 2015 Permit, Effluent Limitation V(A). BAT and BCT include both nonstructural and structural measures. 1997 Permit, Section A(8); 2015 Permit, Section X(H). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the 1997 Permit and Discharge Prohibition III(B) of the 2015 Permit prohibit the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the 1997 Permit and Discharge Prohibition III(C) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the 1997 Permit and Receiving Water Limitation VI(B) of the 2015 Permit prohibit storm water discharges and authorized non-storm water discharges that adversely impact human health or the environment. Receiving Water Limitation

¹ The Benchmark Values can be found at:
http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf.

C(2) of the 1997 Permit and Receiving Water Limitation VI(A) and Discharge Prohibition III(D) of the 2015 Permit also prohibit storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2) of the 1997 Permit and Receiving Water Limitation VI(A) of the 2015 Permit. As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

Concrete Inc. has discharged and continues to discharge storm water with unacceptable levels of TSS and iron in violation of the General Permit. Concrete Inc.'s sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the General Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility have contained observations and measurements of pollutants in excess of applicable numerical and narrative water quality standards established in the Basin Plan. They have thus violated Discharge Prohibitions A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit, and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration/ Conditions	Basin Plan Water Quality Objective / CTR	Outfall (as identified by the Facility)
2/17/2017	Iron	1.78 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
2/2/2017	Iron	3.9 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
12/8/2016	Iron	2.42 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
10/27/2016	Iron	9.53 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
1/5/2016	Iron	3.05 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
11/9/2015	Iron	2.22 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
11/2/2015	Iron	0.85 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
4/7/2015	Iron	8.57 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
11/20/2014	Iron	5.04 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall

2/7/2014	Iron	0.74 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall
11/20/2013	Iron	2.23 mg/L	0.3 mg/L (WQO) / 0.3 mg/L (SMCL)	Northwesterly Outfall

The information in the above table reflects data gathered from Concrete Inc.'s self-monitoring during the 2013-2014, 2014-2015 wet seasons and the 2015-2016 and 2016-2017 reporting years. CSPA alleges that since at least December 14, 2012, and continuing through today, Concrete Inc. has discharged storm water contaminated with pollutants at levels that exceed one or more applicable water quality standards, including but not limited to each of the following:

- Iron – 0.3 mg/L (WQO)
- Iron – 0.3 mg/L (SMCL)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit; and are evidence of ongoing violations of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value /Annual NAL	Outfall (as identified by the Facility)
10/27/2016	Total Suspended Solids	546 mg/L	400 mg/L	Northwesterly Outfall
2016-2017 reporting year	Total Suspended Solids	172 mg/L	100 mg/L	Northwesterly Outfall ²
2015-2016 reporting year	Total Suspended Solids	114 mg/L	100 mg/L	Northwesterly Outfall ³
11/20/2014	Total Suspended Solids	160 mg/L	100 mg/L	Northwesterly Outfall
2/17/2017	Iron	1.78 mg/L	1 mg/L	Northwesterly Outfall
2/2/2017	Iron	3.9 mg/L	1 mg/L	Northwesterly Outfall
12/8/2016	Iron	2.42 mg/L	1 mg/L	Northwesterly Outfall
10/27/2016	Iron	9.53 mg/L	1 mg/L	Northwesterly Outfall
2016-2017	Iron	4.4 mg/L	1 mg/L	Northwesterly Outfall ⁴

² This value is represents the average of all TSS measurements taken at the Facility during the 2016-2017 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

³ This value is represents the average of all TSS measurements taken at the Facility during the 2015-2016 reporting year and is higher than 100 mg/L, the annual NAL for TSS.

reporting year				
1/5/2016	Iron	3.05 mg/L	1 mg/L	Northwesterly Outfall
11/9/2015	Iron	2.22 mg/L	1 mg/L	Northwesterly Outfall
11/2/2015	Iron	0.85 mg/L	1 mg/L	Northwesterly Outfall
2015-2016 reporting year	Iron	2.0 mg/L	1 mg/L	Northwesterly Outfall ⁵
11/20/2013	Iron	2.23 mg/L	1 mg/L	Northwesterly Outfall

The information in the above table reflects data gathered from Concrete Inc.'s self-monitoring during the 2013-2014, 2014-2015 wet seasons and the 2015-2016 and 2016-2017 reporting years. CSPA notes that Concrete Inc.'s sampling results from the 2015-2016 reporting year have now placed the Facility in Level 1 Status pursuant to the General Permit. CSPA alleges that since at least December 14, 2012, Concrete Inc. has discharged storm water contaminated with pollutants at levels that exceed the applicable EPA Benchmarks and NALs for TSS and iron.

CSPA's investigation, including its review of Concrete Inc.'s Storm Water Pollution Prevention Plan ("SWPPP"), Concrete Inc.'s analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards, and EPA benchmark values and NALs, indicates that Concrete Inc. has not implemented BAT and BCT at the Facility for its discharges of TSS, iron, and potentially other pollutants in violation of Effluent Limitation B(3) of the 1997 Permit and Effluent Limitation V(A) of the 2015 Permit. Concrete Inc. was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, Concrete Inc. is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the 1997 Permit; Discharge Prohibitions III(C) and III(D) and Receiving Water Limitations VI(A), VI(B), and VI(C) of the 2015 Permit. CSPA alleges that such violations also have occurred and will occur on other rain dates, including on information and belief every significant rain event that has occurred since December 14, 2012, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CSPA alleges that Concrete Inc. has discharged storm water containing impermissible and unauthorized levels of TSS and iron in violation of Section 301(a) of the Act as well as Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the

⁴ This value is represents the average of all iron measurements taken at the Facility during the 2016-2017 reporting year and is higher than 1 mg/L, the annual NAL for iron.

⁵ This value is represents the average of all iron measurements taken at the Facility during the 2015-2016 reporting year and is higher than 1 mg/L, the annual NAL for iron.

1997 Permit; and Effluent Limitation V(A), Discharge Prohibitions III(B) and III(C) and Receiving Water Limitations VI(A) and VI(B) of the 2015 Permit.⁶

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Each discharge of storm water constitutes an unauthorized discharge of TSS, iron, and storm water associated with industrial activity in violation of Section 301(a) of the CWA. Each day that the Facility operates without implementing BAT/BCT is a violation of the General Permit. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, Concrete Inc. is subject to penalties for violations of the General Permit and the Act since December 14, 2012.

B. Failure to Conduct Sampling and Analysis.

The 1997 Permit requires facility operators to develop and implement an adequate Monitoring and Reporting Program before industrial activities begin at a facility. *See* 1997 Permit, § B(1). The 2015 Permit includes similar monitoring and reporting requirements. *See* 2015 Permit, § XI. The primary objective of the Monitoring and Reporting Program is to both observe and to detect and measure the concentrations of pollutants in a facility's discharge to ensure compliance with the General Permit's discharge prohibitions, effluent limitations, and receiving water limitations. An adequate Monitoring and Reporting Program therefore ensures that BMPs are effectively reducing and/or eliminating pollutants at a facility, and is evaluated and revised whenever appropriate to ensure compliance with the General Permit.

Sections B(3)-(16) of the 1997 Permit set forth the monitoring and reporting requirements. As part of the Monitoring Program, all facility operators must conduct visual observations of storm water discharges and authorized non-storm water discharges, and collect and analyze samples of storm water discharges. As part of the Reporting Program, all facility operators must timely submit an Annual Report for each reporting year. The monitoring and reporting requirements of the 2015 Permit are substantially similar to those in the 1997 Permit, and in several instances more stringent.

The 1997 Permit requires dischargers to collect storm water samples during the first hour of discharge from the first storm event of the wet season, and at least one other storm event during the wet season, from all storm water discharge locations at a facility. *See* 1997 Permit, § B(5). A sample must be collected from each discharge point at the facility, and in the event that an operator fails to collect samples from the first storm event, the operators must still collect

⁶ The rain dates on the attached table are all the days when 0.1" or more rain was observed at a weather station in Stockton in close proximity to the Facility or samples were taken of stormwater discharging from the facility. The data was accessed via <https://www.ncdc.noaa.gov/cdo-web/search?datasetid=GHCND> (Last accessed on December 8, 2017).

samples from two other storm events and “shall explain in the Annual Report why the first storm event was not sampled.” *See* 1997 Permit, § B(5)(a). The 2015 Permit now mandates that facility operators sample *four* (rather than two) storm water discharges from all discharge locations over the course of the reporting year. *See* 2015 Permit, §§ XI(B)(2), (3). Storm water discharges trigger the sampling requirement under the 1997 Permit when they occur during facility operating hours and are preceded by at least three working days without storm water discharge. *See* 1997 Permit, § B(5)(b). The 2015 Permit shortens the preceding no discharge period to 48 hours. *See* 2015 Permit, § XI(B)(1). Samples must be collected from each drainage area at all discharge locations and be representative of storm water associated with the Facility’s industrial activity and any commingled discharges. *See* 2015 Permit, § XI(B)(4); *see also* 1997 Permit § B(5)(a).

On information and belief, CSPA alleges that during the 2015-2016 reporting year, Concrete Inc. failed to collect and analyze storm water samples from a fourth storm event. CSPA alleges that local precipitation data compared to dates when the Facility did collect storm water samples shows that discharges occurred on several dates during that wet seasons on which the Facility was open. Specifically, CSPA alleges that discharges occurred on the following dates where discharges occurred but a storm water sample was not taken at the Facility:

- February 18, 2016
- December 28, 2015
- December 14, 2015
- December 11, 2015
- December 4, 2015
- November 25, 2015
- November 9, 2015
- November 2, 2015
- October 1, 2015

Because Concrete Inc. failed to take a fourth storm water sample for the entire 2015-2016 reporting year, Concrete Inc. has violated the General Permit’s monitoring requirement for that entire period, amounting to at least 365 violations of the Act. These violations of the General Permit are ongoing. Concrete Inc. is subject to penalties for each of those daily violations of the General Permit and the Act’s monitoring and sampling requirements.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan.

Under the General Permit, the State Board has designated the SWPPP as one of the cornerstones of compliance with NPDES requirements for storm water discharges from industrial facilities, and ensuring that operators meet effluent and receiving water limitations. Section A(1) and Provision E(2) of the 1997 Permit require dischargers to develop and implement a SWPPP prior to beginning industrial activities that meet all of the requirements of the 1997 Permit. The objective of the SWPPP requirement is to identify and evaluate sources of

pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-stormwater discharges from the facility, and to implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges and authorized non-stormwater discharges. See 1997 Permit § A(2); 2015 Permit § X(C). These BMPs must achieve compliance with the General Permit's effluent limitations and receiving water limitations. To ensure compliance with the General Permit, the SWPPP must be evaluated and revised as necessary. 1997 Permit §§ A(9), (10); 2015 Permit § X(B). Failure to develop or implement an adequate SWPPP, or update or revise an existing SWPPP as required, is a violation of the General Permit. 2015 Permit Factsheet § I(1).

Sections A(3)-A(10) of the 1997 Permit set forth the requirements for a SWPPP. Among other requirements, the SWPPP must include: a pollution prevention team; a site map; a list of significant materials handled and stored at the site; a description of potential pollutant sources; an assessment of potential pollutant sources; and a description of the BMPs to be implemented at the facility that will reduce or prevent pollutants in storm water discharges and authorized non-stormwater discharges, including structural BMPs where non-structural BMPs are not effective. Sections X(D) – X(I) of the 2015 Permit set forth essentially the same SWPPP requirements as the 1997 Permit, except that all dischargers are now required to develop and implement a set of minimum BMPs, as well as any advanced BMPs as necessary to achieve BAT/BCT, which serve as the basis for compliance with the 2015 Permit's technology-based effluent limitations. See 2015 Permit § X(H). The 2015 Permit further requires a more comprehensive assessment of potential pollutant sources than the 1997 Permit; more specific BMP descriptions; and an additional BMP summary table identifying each identified area of industrial activity, the associated industrial pollutant sources, the industrial pollutants, and the BMPs being implemented. See 2015 Permit §§ X(G)(2), (4), (5).

The 2015 Permit requires dischargers to implement and maintain, to the extent feasible, all of the following minimum BMPs in order to reduce or prevent pollutants in industrial storm water discharges: good housekeeping, preventive maintenance, spill and leak prevention and response, material handling and waste management, erosion and sediment controls, an employee training program, and quality assurance and record keeping. See 2015 Permit, § X(H)(1). Failure to implement all of these minimum BMPs is a violation of the 2015 Permit. See 2015 Permit Fact Sheet § I(2)(o). The 2015 Permit further requires dischargers to implement and maintain, to the extent feasible, any one or more of the following advanced BMPs necessary to reduce or prevent discharges of pollutants in industrial storm water discharges: exposure minimization BMPs, storm water containment and discharge reduction BMPs, treatment control BMPs, and other advanced BMPs. See 2015 Permit, § X(H)(2). Failure to implement advanced BMPs as necessary to achieve compliance with either technology or water quality standards is a violation of the 2015 Permit. *Id.* The 2015 Permit also requires that the SWPPP include BMP Descriptions and a BMP Summary Table. See 2015 Permit § X(H)(4), (5). A Facility's BMPs must, at all times, be sufficiently robust to meet the General Permit's and 33 U.S.C. ¶ 1342(p)(3)(A)'s requirement that all discharges associated with industrial activities be subjected to BAT and BCT. 2015 Permit §§ V(A), I(A)(1), I(D)(31), I(D)(32); 1997 Permit, Effluent Limitation B(3), Receiving Water Limitation C(3).

Despite these clear BMP requirements, Concrete Inc. has been conducting and continues to conduct industrial operations at the Facility with an inadequately developed, implemented, and/or revised SWPPP.

The SWPPP fails to comply with the requirements of Section X(G)(2) of the 2015 Permit. Concrete Inc. has failed to identify where the minimum BMPs in different areas of the Facility will not adequately reduce the pollutants in the Facility's storm water dischargers and to identify advanced BMPs for those areas.

The SWPPP fails to comply with the requirements of Section X(H) of the 2015 Permit. The SWPPP fails to implement required advanced BMPs.

Most importantly, the Facility's storm water samples and discharge observations have consistently exceeded EPA benchmarks and NALs, demonstrating the failure of its BMPs to reduce or prevent pollutants associated with industrial activities in the Facility's discharges consistent with the BAT and BCT requirements. Despite these exceedances, Concrete Inc. has failed to sufficiently update the Facility's SWPPP. The Facility's SWPPP has therefore never achieved the General Permit's objective to identify and implement BMPs to reduce or prevent pollutants associated with industrial activities in storm water discharges consistent with reductions achieved by implementing BAT and BCT at the Facility.

CSPA puts Concrete Inc. on notice that it violates the General Permit and the CWA every day that the Facility operates with an inadequately developed, implemented, and/or revised SWPPP. These violations are ongoing, and CSPA will include additional violations as information and data become available. Concrete Inc. is subject to civil penalties for all violations of the CWA occurring since December 14, 2012.

D. Failure to Comply with 2015 Permit Evaluation and ERA Requirements

On or about September 30, 2016, Concrete Inc. submitted an "Exceedance Response Action Evaluation and Report Level One" to the State Board's SMARTs system. The ERA Report and Level One status are triggered by exceedances of the NALs adopted in the 2015 General Permits. The ERA Level One report must, among other requirements, "[i]dentify in the evaluation the corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of this General Permit." 2015 Permit, § VII.C.1.c.

Concrete Inc.'s ERA Level 1 report addresses the Facility's exceedance of the NAL for iron during the 2015-2016 reporting year. The iron NAL is an annual average of 1 mg/L. Although the report addresses iron, Concrete Inc. failed to identify BMPs necessary to prevent future NAL exceedances or to comply with BAT/BCT requirement of permit. The dust and silt control measures identified in the ERA could not have achieved, and indeed did not achieve, the applicable NAL for iron.

Also during the 2015-2016 reporting year, Concrete Inc. exceeded the NAL annual average for TSS of 100 mg/L. However, Concrete Inc.'s ERA Level 1 report does not address the Facility's exceedance of the NAL for TSS. Section XII of the 2015 General Permit requires that, when a discharger exceeds an NAL, the Facility is assigned a Level 1 status as of the subsequent July 1st. 2015 General Permit, § XII. That status triggers the requirement for the Facility to evaluate the cause of the exceedance and measures necessary to eliminate the exceedance by not later than October 1 of that same year. *Id.*, § XII.C.1. A Level 1 ERA Report is then required to be submitted to the SMARTs system no later than January 1. *Id.*, § XII.C.2. Concrete Inc. failed to prepare an ERA Level 1 report addressing its discharges of TSS at a level above the average annual NAL.

Although "[i]t is not a violation of this General Permit to exceed the NAL values; it is a violation of the permit, however, to fail to comply with the Level 1 status and Level 2 status ERA requirements in the event of NAL exceedances." Fact Sheet, p. 60. Accordingly, CSPA puts Concrete Inc. on notice that it has violated and continues to violate the General Permit and the CWA every day that the Facility operates without adequate Level 1 ERA Reports for TSS and iron. These violations are ongoing. Concrete Inc. is subject to civil penalties for each day it has failed to submit an adequate Level 1 ERA Report.

III. Persons Responsible for the Violations.

CSPA puts Concrete Inc., Concrete Inc. dba Knife River - Stockton, Concrete Inc. dba Knife River, Knife River Corporation, Knife River Corporation – Northwest, Ernesto Alvarez, Mike Brent, Steve Azevedo, Dave Smith, Dustin Hiehle, and David C. Barney on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CSPA puts Concrete Inc., Concrete Inc. dba Knife River - Stockton, Concrete Inc. dba Knife River, Knife River Corporation, Knife River Corporation – Northwest, Ernesto Alvarez, Mike Brent, Steve Azevedo, Dave Smith, Dustin Hiehle, and David C. Barney on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address and telephone number of the California Sportfishing Protection Alliance is as follows:

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
3536 Rainier Avenue
Stockton, CA 95204
Tel. (209) 464-5067
deltakeep@me.com

Messrs. Ernesto Alvarez, et al.
Concrete Inc.
December 14, 2017
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V. Counsel.

CSPA has retained legal counsel to represent it in this matter. Please direct all communications to:

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
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VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects Concrete Inc. to a penalty of up to \$37,500 per day per violation for all violations. In addition to civil penalties, CSPA will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. §1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CSPA believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CSPA intends to file a citizen suit under Section 505(a) of the Act against Concrete Inc. and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CSPA would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CSPA suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CSPA does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,

Michael R. Lozeau
Lozeau Drury LLP
Attorneys for California Sportfishing Protection Alliance

SERVICE LIST – via certified mail

Scott Pruitt, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Eileen Sobeck, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Jefferson B. Sessions III, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Alexis Strauss, Acting Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

Pamela C. Creedon, Executive Officer
Regional Water Quality Control Board
Central Valley Region
11020 Sun Center Drive #200
Rancho Cordova, CA 95670-6114

ATTACHMENT A
Rain Dates, Concrete, Inc., Stockton, CA

1/30/2014	6/11/2015	10/31/2016
2/3/2014	10/1/2015	11/20/2016
2/6/2014	11/2/2015	11/21/2016
2/7/2014	11/3/2015	11/23/2016
2/8/2014	11/9/2015	11/27/2016
2/9/2014	11/10/2015	12/8/2016
2/10/2014	11/15/2015	12/10/2016
2/27/2014	11/25/2015	12/11/2016
2/28/2014	12/4/2015	12/16/2016
3/1/2014	12/11/2015	12/24/2016
3/3/2014	12/14/2015	1/3/2017
3/4/2014	12/19/2015	1/4/2017
3/6/2014	12/22/2015	1/5/2017
3/27/2014	12/25/2015	1/7/2017
3/30/2014	12/28/2015	1/8/2017
4/1/2014	1/5/2016	1/9/2017
4/2/2014	1/6/2016	1/10/2017
4/25/2014	1/7/2016	1/11/2017
4/26/2014	1/15/2016	1/19/2017
9/26/2014	1/16/2016	1/20/2017
11/1/2014	1/18/2016	1/21/2017
11/13/2014	1/19/2016	1/22/2017
11/20/2014	1/20/2016	1/23/2017
11/21/2014	1/23/2016	1/24/2017
11/23/2014	1/30/2016	2/2/2017
12/1/2014	2/18/2016	2/4/2017
12/2/2014	3/5/2016	2/6/2017
12/3/2014	3/6/2016	2/7/2017
12/4/2014	3/7/2016	2/8/2017
12/12/2014	3/12/2016	2/10/2017
12/15/2014	3/13/2016	2/11/2017
12/16/2014	3/14/2016	2/17/2017
12/17/2014	4/9/2016	2/18/2017
12/18/2014	4/10/2016	2/20/2017
12/20/2014	4/23/2016	2/21/2017
2/7/2015	5/7/2016	2/22/2017
2/8/2015	5/22/2016	3/5/2017
2/9/2015	10/15/2016	3/21/2017
3/12/2015	10/17/2016	3/22/2017
4/7/2015	10/27/2016	3/23/2017
4/8/2015	10/28/2016	3/25/2017
4/25/2015	10/29/2016	4/7/2017

Notice of Violations and Intent to File Suit

ATTACHMENT A
Rain Dates, Concrete, Inc., Stockton, California

4/8/2017	4/17/2017	11/16/2017
4/9/2017	4/18/2017	11/27/2017
4/13/2017	10/20/2017	